

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WILLIAM JOSEPH WEBB, JR.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C. A. No. 07-31 - GMS
	:	
FIRST CORRECTIONAL MEDICAL,	:	
CORRECTIONAL MEDICAL SERVICES,	:	
GOVERNOR RUTH ANN MINNER,	:	
COMMISSIONER STANLEY W. TAYLOR,	:	TRIAL BY JURY OF
BUREAU CHIEF PAUL W. HOWARD,	:	TWELVE DEMANDED
MS. GINA WOLKEN,	:	
DR. ALI, DR. NIAZ, DR. JOHN DOE,	:	
DR. ANE DOE, CORRECTIONAL MEDICAL	:	
SERVICES GRIEVANCE HEARING STAFF,	:	
MS. ROSALIE VARGAS,	:	
JOHN DOE, AND JANE DOE,	:	
	:	
Defendants.	:	

**DEFENDANTS CMS, DR. NIAZ, AND GINA WOLKEN'S RESPONSE TO  
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

NOW COMES Defendants CMS, Dr. Niaz, and Gina Wolken, by and through the undersigned attorney, and respond to Plaintiff's Motion for Default Judgment as follows:

1. Plaintiff titled his Motion for Default Judgment against the Answering Defendants as a Motion for Default Judgment under Federal Rule of Civil Procedure 55. However, such a request for default under Rule 55 is inappropriate here. Rule 55 only applies when a party has failed to plead or otherwise defend a case. Here, rather, Plaintiff filed his Motion because he seeks Defendants Answers to Interrogatories. The Defendants have not failed to plead or otherwise defend the case, and therefore, a Motion for Default Judgment is inappropriate.

2. Plaintiff incorrectly states that failure to Answer Interrogatories under law means that the Defendants have admitted guilt. Federal Rule of Civil Procedure 33 governs Interrogatories to

parties. Nowhere in Rule 33 does it state that failure to answers Interrogatories means that they are admitted or that Defendants have admitted guilt.

3. Plaintiff also incorrectly states that because he explicitly stated that failure to answer the Interrogatories would result in an automatic default judgment against the Defendants, such a default judgment should be entered. Plaintiffs own assertions have no bearing.

4. Rather than a Motion for Default Judgment, Plaintiff's available remedy when seeking Answers to Interrogatories is found under Federal Rule of Civil Procedure 37. Plaintiff has not made any Motion for an Order compelling discovery under Rule 37.

5. Nor has Plaintiff made any attempt to confer with the Defendants regarding the Answers to Interrogatories he seeks. Under Rule 37(a)(1)(2)(A), a party making a Motion to Compel must include a certification that the movant has in good faith conferred or attempted to confer with the party not answering the discovery. Plaintiff has not conferred or attempted to confer with the Defendants, and has not included a certification as to such. Plaintiff states that he gave Defendants one 30-day extension. However, Defendant CMS wrote Plaintiff requesting additional time to file Answers to Interrogatories; Plaintiff did not respond and Defendant CMS deemed the extension granted. Defendants Dr. Niaz and Gina Wolken did not request any extension and Plaintiff has not conferred with them.

6. Correctional Medical Services filed Answers to Plaintiff's Interrogatories through the Federal Court CM/ECF filing system on December 7, 2007 (D.I.64). Therefore, Plaintiff's Motion as to Defendant CMS is moot.

WHEREFORE, Defendant CMS requests that Plaintiff's Motion for Default Judgment be denied as the inappropriate remedy and moot. Defendants Dr. Niaz and Gina Wolken request Plaintiff's Motion for Default Judgment be denied as an inappropriate remedy.

Marks, O'Neill, O'Brien & Courtney, P.C.

By: /s/ Ryan M. Ernst  
Ryan M. Ernst, Esquire/ID No. 4788  
Megan T. Mantzavinos, Esquire/ID No. 3802  
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Wilmington, DE 19801  
(302) 658-6538  
*Attorneys for Defendants CMS, Dr. Niaz  
and Ms. Gina Wolken*

DATED: December 14, 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WILLIAM JOSEPH WEBB, JR.,

Plaintiff,

v.

FIRST CORRECTIONAL MEDICAL,  
CORRECTIONAL MEDICAL SERVICES,  
GOVERNOR RUTH ANN MINNER,  
COMMISSIONER STANLEY W. TAYLOR,  
BUREAU CHIEF PAUL W. HOWARD,  
MS. GINA WOLKEN,  
DR. ALI, DR. NIAZ, DR. JOHN DOE,  
DR. ANE DOE, CORRECTIONAL MEDICAL  
SERVICES GRIEVANCE HEARING STAFF,  
MS. ROSALIE VARGAS,  
JOHN DOE, AND JANE DOE,

Defendants.

C. A. No. 07-31 - GMS

TRIAL BY JURY OF  
TWELVE DEMANDED

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**CERTIFICATE OF SERVICE**

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I, **Ryan M. Ernst**, Esquire hereby certify that on **December 14, 2007**, I electronically filed **Defendants CMS, Dr. Niaz, and Gina Wolken's Response to Plaintiff's Motion for Default Judgment** with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Catherine Damavandi  
Deputy Attorney General  
State of Delaware Department of Justice  
Carvel State Office Bldg.  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801

I have served via first class mail two copies of **Defendants CMS, Dr. Niaz, and Gina Wolken's Response to Plaintiff's Motion for Default Judgment** to the Pro Se Defendant:

William Joseph Webb, Jr., pro se  
SBI # 256056  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

/s/ Ryan M. Ernst  
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*Attorney for Defendants CMS, Dr. Niaz and  
Ms. Gina Wolken*